

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 03 JUN 2005



WIPO PCT

Applicant's or agent's file reference 53-24194	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/IB 03/06496	International filing date (day/month/year) 12.12.2003	Priority date (day/month/year) 13.12.2002
International Patent Classification (IPC) or both national classification and IPC A01K47/02		
Applicant 6116469 CANADA, INC. et al.		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.
  - ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of    sheets.

- This report contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

Date of submission of the demand 13.07.2004	Date of completion of this report 02.06.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Van Woensel, G  Telephone No. +49 89 2399-2089 

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/IB 03/06496**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-7 as originally filed

**Claims, Numbers**

1-20 as originally filed

**Drawings, Sheets**

1/5-5/5 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/IB 03/06496**

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-20
Inventive step (IS)	Yes: Claims	
	No: Claims	1-20
Industrial applicability (IA)	Yes: Claims	1-20
	No: Claims	

2. Citations and explanations

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/IB 03/06496

**Ad V**

1. Reference is made to the following documents:  
D1: DE 27 16 987 A  
D2: US-A-4 185 343
2. The present application does not meet the requirements of Article 33(2) PCT, because the subject-matter of claim 1, 7 and 17 is not new in the sense of Article 33(2) PCT.
  - 2.1 Document D1 discloses (see passages indicated in the international search report) a device for the collection and packaging of comb honey comprising a frame structured to fit within a honey collection section of a beehive, the frame having a plurality of cavities for collecting the honey, and separation structures to facilitate separation of the cavities from the frame.  
Therefore, claim 1 lacks novelty (Art. 33(2) PCT).
  - 2.2 Furthermore, the device of D1 also shows opposing sides or frame halves and a plurality of outwardly facing cavities in each of the sides, and each of the frame halves including a backside that is enclosed by the frame to keep bees away from the backside.  
Therefore, claims 7 and 17 lack novelty (Art. 33(2) PCT)
  - 2.3 Document D2 is also novelty destroying for the subject-matter of independent claims 1, 7 and 17 (Art. 33(2)PCT), see figures 1-5.
3. The dependent claims are only allowable when related to a patentable independent claim.  
In the present case, the dependent claims merely concern several preferred embodiments of the invention which do not contain any features which meet the requirements of the PCT in respect of inventive step.
4. Although claims 1, 7 and 17 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/IB 03/06496

Hence, these claims do not meet the requirements of Article 6 PCT.

In order to overcome this objection, it would appear appropriate to file an amended set of claims defining the relevant subject-matter **in terms of a single independent claim** followed by dependent claims covering features which are merely optional (Rule 6.4 PCT).